

1 should have been there we wouldn't be sitting
2 here today.

3 A You know if they had included all
4 of the systems and launched all of the
5 systems, no, we wouldn't be sitting here I
6 don't think. I don't see how we would be.

7 MR. SCHONMAN: I don't have any
8 further questions, Your Honor.

9 MR. KIM: Your Honor, two
10 questions on redirect.

11 JUDGE SIPPEL: Yes.

12 REDIRECT EXAMINATION

13 BY MR. KIM:

14 Q Mr. Gluck, just to follow up on
15 the Enforcement Bureau's question. If Comcast
16 had given you two hours before the deadline
17 that you had in your mind the list on Schedule
18 A of systems that you thought you had agreed
19 to, do you have any other complaint with any
20 other part of that agreement? Any word being
21 struck? Any line being added? Any other
22 change?

1 A No.

2 Q Do you remember the Court asking
3 you whether you took Schedule A on face value?

4 A Yes, I think I remember it.

5 Q Okay. Based on your experience
6 over 19 years negotiating more than 100
7 agreements, would you tell the Court why you
8 took it on face value?

9 A We never had that problem before.
10 In negotiations I've had with Comcast in the
11 past while they've been, you know, evolved and
12 contentious have always ended up, we've always
13 ended up where we're supposed to be. So I've
14 never had this be an issue.

15 Q And when they're putting together
16 Schedule A, who has the better information for
17 that schedule?

18 A They have. They know where their
19 systems are. They know what they call their
20 systems. And they know how many subscribers
21 they have in their systems. We don't until we
22 find out from them.

1 MR. KIM: I have no other
2 questions. After the witness has just
3 finished testifying, I have no more questions,
4 Your Honor.

5 MR. SCHONMAN: The Bureau has --

6 JUDGE SIPPEL: Go ahead. You have
7 some more. Go ahead please.

8 EXAMINATION

9 BY MR. SCHONMAN:

10 Q Was MASN required to sign this
11 contract by the deadline?

12 A Required to? No, I think we could
13 have gone to -- If we hadn't signed the
14 contract, we would have had to make that
15 election between the arbitration and having
16 the complaint heard by an ALJ. But we wanted
17 to get it resolved.

18 Q And if the company -- Let's play
19 out a scenario. If the company had opted to
20 go for a hearing before an ALJ, it could have
21 continued to negotiate with Comcast, couldn't
22 it?

1 A I don't know the answer to that
2 honestly.

3 Q You're a lawyer. You don't know
4 the answer to that.

5 A I'm not an FCC lawyer. I don't
6 practice before the FCC. I mean, I could
7 assume you're right, but I don't know that's
8 absolutely correct.

9 Q I don't want you to assume. But
10 you've negotiated a lot of affiliation
11 agreements before.

12 A That's correct.

13 Q Is there anything that you're
14 aware of that would have prevented the parties
15 from continuing to negotiate the terms and
16 conditions of this affiliation agreement?

17 A I'm not aware of anything other
18 than that once we proceeded forward I think it
19 would be a hell of a lot more, heck of a lot
20 more, difficult to get a deal done. Sorry
21 about that.

22 JUDGE SIPPEL: You're not

1 enforcing that one.

2 (Laughter.)

3 THE WITNESS: I'm sorry.

4 BY MR. SCHONMAN:

5 Q As a lawyer, you're aware that
6 parties sometimes settle cases even after
7 they've gone to hearing.

8 A That's correct.

9 MR. SCHONMAN: I don't have any
10 further questions, Your Honor.

11 JUDGE SIPPEL: If I could just. I
12 guess I would be asking you to speculate, but
13 I don't for the life of me understand what was
14 all at stake with this agreement and the
15 pressures that you're understand in August of
16 2006. Why would either somebody of the
17 reputation of Mr. Bond or Mr. Dannenbaum or
18 Mr. Rosenberg why they would want to put
19 together an inaccurate or intentionally put
20 together an inaccurate -- I mean that's what
21 you're really saying, right, when it comes
22 down to it? There was no way that you could

1 have gotten euchred on this if you had gotten
2 a Schedule A that was not accurate.

3 THE WITNESS: That is what we're
4 saying and I can't explain it. But we said --
5 At one point during the negotiations and it
6 was on August 3rd we had gone back to Mr.
7 Angelos to talk about a couple of the issues.

8 JUDGE SIPPEL: That's Mr. Peter
9 Angelos.

10 THE WITNESS: Peter Angelos yes
11 and I think it was when we were talking about
12 the 150,000 Adelphia subscriber systems and
13 said, "You know we think it's not unreasonable
14 to give them that dispensation." He said,
15 "That's fine, but it's got to be everything
16 else." And when we called -- When we talked
17 to Matt and Alan after that --

18 JUDGE SIPPEL: Matt being Bond.

19 THE WITNESS: Matt Bond and Alan
20 Dannenbaum. We called them back. We said,
21 "Yes, we can do that, but it's got to be
22 everything else." We made it really clear.

1 So I don't know how else to answer your
2 question.

3 JUDGE SIPPEL: Could that
4 conceivably have been an error on their part?

5 THE WITNESS: I know that it took
6 them awhile to come up with the list.

7 JUDGE SIPPEL: But they didn't
8 have much time to come with it.

9 THE WITNESS: No, it took them --
10 But it wasn't something they could give us
11 right now which I think is kind of interesting
12 given the question that Mr. Kirk asked, "Why
13 did we have a list?" Comcast didn't have a
14 list of all their systems in the territory.
15 They had to come up with a list or manufacture
16 this list. It wasn't quickly. It wasn't
17 given to us that day. It came at like two
18 hours before the deadline.

19 JUDGE SIPPEL: And did you -- Did
20 that raise any -- In light of all your
21 experiences, did it raise any suspicion?

22 THE WITNESS: No. I knew that Mike

1 Ortman or I thought that Mike, and I had met
2 with Mike before and talked to Mike. I've
3 known Mike since 1994. Mike Ortman is the
4 head of the -- I forgot his title, but he's in
5 charge of the systems in the MidAtlantic
6 region for Comcast.

7 JUDGE SIPPEL: Yes. We've heard
8 him testify before.

9 THE WITNESS: You'll be hearing
10 from him and I've known Mike since like '93
11 and '94. I knew that Mike had to compile a
12 list and some of the systems as I recall were
13 actually not within his -- He didn't oversee
14 those systems. So it took them some time to
15 put this list together between August 3rd and
16 August 4th. He had to -- And I remember
17 talking internally and people were saying,
18 "What's taking so long with list" and I said,
19 "Well, I think Mike has to go and talk to the
20 other guys and get that information." I think
21 Dannenbaum even said that in the
22 conversations. I seem to recall this. So it

1 didn't surprise me.

2 JUDGE SIPPEL: But you speak about
3 these people as though that, you know, you're
4 ready to go out on a boat with them for
5 weekend or something. What's going on?

6 THE WITNESS: I -- Listen. I've
7 done deals with Comcast. I haven't done a lot
8 of them, but I did one in 2005, excuse me,
9 2004 with Comcast for one regional network.
10 I did one in 2006 with another regional
11 network. I did one this last year for another
12 national network and I did this one in 2006
13 with MidAtlantic Sports Network. And I mean
14 these are nice guys. Alan Dannenbaum called
15 me up and asked me to help with his son's bar
16 mitzvah for a -- Get some Allen Iverson
17 footage because Allen Iverson played for the
18 Nuggets and I worked for the Nuggets Regional
19 Sports Network.

20 He also called up and asked for
21 some things for a charity auction they were
22 doing. We got them that, I think, some signed

1 stuff from MidAtlantic Sports Network as I
2 recall. You know, it's a small community.

3 JUDGE SIPPEL: Then why? That's
4 what I'm really in a quandary here about that
5 because, I'm mentally in a quandary about it,
6 because why would they deliberately prepare a
7 false -- Basically, you're telling me a false,
8 not misleading even. I mean you're either in
9 or you're out on a list.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: And for such a
12 comparably small -- I know how important.
13 I've had the testimony on how important it is
14 to have the whole ball of wax. But on a
15 comparative basis, it looks relatively small
16 that it doesn't seem to -- If you weigh the
17 cause/benefits of doing something like ruining
18 your reputation in an industry.

19 THE WITNESS: I'm definitely not
20 trying to ruin their reputation.

21 JUDGE SIPPEL: No, I know you're
22 not, but if they come up with a false

1 document, a false list of assets, that you're
2 trying to buy and then they walk away from the
3 deal and say, "Tough luck" I mean what could
4 be much worse than that.

5 THE WITNESS: I agree. It doesn't
6 make a lot of sense. I don't understand it.
7 I don't have an answer. I know that we made
8 it clear to them it had to be all systems.
9 Absolutely.

10 JUDGE SIPPEL: I have nothing
11 further.

12 MR. KIM: Your Honor, we have good
13 news. First of all, could we excuse the
14 witness?

15 JUDGE SIPPEL: You settled.
16 (Laughter.)

17 MR. KIM: Maybe tomorrow, Your
18 Honor.

19 JUDGE SIPPEL: Yes, we may excuse
20 the witness. Certainly sir.

21 You're finished for the day?

22 MR. KIM: No sir. The good news

1 is that we're on your last witness. We're on
2 our last witness and we would just like a
3 quick afternoon recess and then come back on
4 and put on our fourth witness.

5 JUDGE SIPPEL: Well, what about --
6 Yes, what about Mr. Gluck? Is he finished?

7 MR. KIM: As long as the Court is
8 done with him.

9 JUDGE SIPPEL: Well, I don't do --
10 I'm not done with him. No, there's no reason
11 why you can't -- Where do you go back to?

12 THE WITNESS: Dallas.

13 JUDGE SIPPEL: Go back to Dallas.

14 THE WITNESS: Thank you.

15 JUDGE SIPPEL: Have a safe trip.
16 Thank you, Mr. Gluck.

17 Okay. You're not to talk about
18 your written testimony to any other witnesses
19 in this case.

20 THE WITNESS: I understand.

21 (Witness excused.)

22 JUDGE SIPPEL: We're in recess for

1 ten minutes. Fifteen minutes. Let's take 15
2 minutes.

3 MR. KIM: Thank you, Your Honor.

4 JUDGE SIPPEL: Off the record.

5 (Whereupon, a short recess was
6 taken.)

7 JUDGE SIPPEL: On the record.

8 MR. KIM: Your Honor, MASN calls
9 its last witness, Dr. Hal Singer.

10 JUDGE SIPPEL: Dr. Singer.

11 WHEREUPON,

12 DR. HAL SINGER

13 was called as a witness for Complainant and,
14 having been first duly sworn, assumed the
15 witness stand, was examined and testified as
16 follows:

17 JUDGE SIPPEL: It's your second
18 oath in these proceedings. So you understand
19 what the drill is.

20 THE WITNESS: I do.

21 JUDGE SIPPEL: Okay. Let's go
22 forward.

1 MR. KIM: Your Honor, just a
2 notation before I begin. I think it's
3 impossible to go through Dr. Singer's
4 testimony and cross examination without
5 raising a lot of highly confidential
6 materials. I scanned the court room. There is
7 nobody here that's not entitled to hear those
8 materials.

9 JUDGE SIPPEL: All right.

10 MR. KIM: I have asked my
11 colleagues to tap me on the shoulder if we
12 need to change course if someone does enter
13 the courtroom. Is that fair?

14 JUDGE SIPPEL: That's fair enough.
15 Oh, yes. I'm -- Listen. I'm not as concerned
16 about this confidentiality as your clients
17 are.

18 MR. KIM: Very well, Your Honor.

19 JUDGE SIPPEL: In the sense that
20 it's not at the top of my head. But I do have
21 to be concerned about it.

22 MR. KIM: Sure.

1 JUDGE SIPPET: Go ahead, Mr. Kim.

2 MR. KIM: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. KIM:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q Looks like you know the Court.

8 Could you please introduce yourself to the
9 court reporter?

10 A Sure. I think I know her, too.
11 Hal Singer.

12 Q What do you do for a living?

13 A I'm an economist.

14 Q And could you just describe very
15 briefly your highest level of education? Your
16 background?

17 A Sure. I have a Ph.D. in Economics
18 from Johns Hopkins.

19 Q And when you say you're an
20 economist, what do you practice?

21 A I practice in a few different
22 areas. I'm a microeconomist, but I do a lot

1 of work in communications, regulation and
2 anti-trust areas.

3 Q Have you been asked by the
4 MidAtlantic Sports Network and by my law firm
5 to form an expert opinion in this case?

6 A Yes, I have.

7 Q And what was the general nature of
8 the analysis that you were asked to do?

9 A I was asked to determine whether I
10 believed Comcast was motivated in this
11 instance on the basis of discrimination. I
12 was asked to determine whether or not MASN was
13 impaired in its ability to compete fairly in
14 the contested areas as a result of that
15 discriminatory conduct. And I was also asked
16 to determine conditional on a finding of
17 discrimination and conditional on a finding
18 that MASN was impaired in its ability to
19 compete fairly what the fair market value
20 should be that Comcast would pay to carry MASN
21 in contested areas.

22 Q Dr. Singer, have you heard the

1 term "similarly situated" used in the context
2 of these type of discrimination matters?

3 A Yes, I have.

4 Q Okay, and have you formed an
5 opinion as to whether MASN is similarly
6 situated with any of Comcast's RSNs?

7 A Yes, I have.

8 Q And briefly can you explain what
9 your opinion is?

10 A Sure. I do believe that they are
11 similarly situated and I reached that
12 conclusion from the perspective of various
13 players in this market. The first player is
14 the perspective of rights holders. So those
15 would be the professional sports teams that
16 are operating in the MidAtlantic area that are
17 selling their programming rights to regional
18 sports networks.

19 We know that MASN and Comcast
20 Sports Net have both competed for the same
21 programming rights, obviously the Baltimore
22 Orioles, the Washington Nationals, the

1 Washington Redskins, the Baltimore Ravens.
2 The list goes on and on, D.C. United. So for
3 me on that dimension, they are clearly
4 similarly situated.

5 But they are also similar situated
6 from the perspective from advertisers.

7 Q Before we go there, Dr. Singer,
8 let me ask you one follow-up question if I
9 might.

10 A Sure.

11 Q You place importance on
12 competition between MASN and Comcast for
13 programming rights. Why do you deem that so
14 significant?

15 A Because ultimately you are what
16 you own. So if you win certain programming
17 rights that's effectively what you're pedaling
18 to cable operators.

19 Q Okay. I'm sorry. I interrupted
20 you. You were going onto advertisers.

21 A Sure. Given the fact that both
22 RSNs are operating the same region, the same

1 part of the country, are offering professional
2 sports, they are targeting a particular
3 demographic and this demographic is males
4 between the age of 29 and 40 and this
5 demographic is highly sought after among
6 advertisers. So I believe that advertisers
7 perceive these two RSNs to be similarly
8 situated.

9 Q So you mentioned programming
10 rights and you mentioned advertisers. Is
11 there anything else that you considered in
12 forming your opinion that they're similarly
13 situated?

14 A Sure. You can look at the
15 perspective of MVPDs in the contested area.
16 I certainly put a lot of weight on the fact
17 that every major MVPD, every major MVPD, in
18 the contested areas carry MASN at the rate
19 that MASN is seeking and that tells me that
20 there is a demand for whatever MASN is
21 offering in the contested areas.

22 Q Dr. Singer, do you understand that

1 this case involved the Cable Act and the FCC's
2 regulations involving discrimination based
3 upon affiliation?

4 A Yes, I do.

5 Q Okay. Did you analyze that
6 question?

7 A Yes, I have.

8 Q Now before I begin, let me ask you
9 a preliminary question. Did you consider the
10 2006 agreement between Comcast and MASN in
11 forming your opinion of discrimination based
12 on affiliation?

13 A No, I did not.

14 Q Could you explain for the Court
15 why please?

16 A Sure. I don't think that the
17 contract, the existence of the contract, has
18 any bearing on whether or not discrimination
19 had occurred here. To borrow one example that
20 the two of us have some familiarity with,
21 there was a contract in the NFL case, I recall
22 that Comcast had secured a tiering right.

1 JUDGE SIPPEL: That's history now
2 you know.

3 THE WITNESS: But there's an
4 important story here.

5 (Laughter.)

6 JUDGE SIPPEL: Does that mean you
7 have to give your feedback?

8 THE WITNESS: No, thanks.

9 JUDGE SIPPEL: I'm sorry. Go
10 ahead.

11 (Laughter.)

12 I'm really sorry.

13 THE WITNESS: Let me know when the
14 jokes concern flying, but I think it's a
15 little premature. It's not quite five.

16 JUDGE SIPPEL: Okay.

17 THE WITNESS: In that case,
18 Comcast had secured a tiering right in the
19 contract that existed between Comcast and NFL
20 and then Comcast had exercised that tiering
21 right and it was the act of exercising that
22 option that was being challenged as

1 discriminatory conduct.

2 Here one could say that Comcast
3 secured whether by deception or whether or not
4 the parties understood the right not to carry
5 MASN in [REDACTED] of MASN's territory. Now
6 they're exercising that right. And to me the
7 very exercise of that right is an act of
8 discrimination and violation of the Cable Act.

9 So I never put any weight in my
10 analysis which is very long on the existence
11 of a contract and after sitting here for two
12 days and listening to Comcast's primary
13 defense of what it's doing, I still put no
14 weight in my economic analysis of whether or
15 not discrimination has occurred and whether or
16 not it's impaired the ability of MASN to
17 compete. I would hope that you wouldn't put
18 any weight either, but that's your decision
19 obviously.

20 BY MR. KIM:

21 Q Dr. Singer, let me take you away
22 from the Judge and let me ask you the

1 following question. Let's get down to some
2 brass tacks. Over MASN's footprint, what
3 percentage of Comcast subscribers receive
4 MASN?

5 A This is the [REDACTED] number
6 that's been talked about a lot.

7 Q Let's use the relevant comparator
8 then. Over MASN's footprint, what percentage
9 of Comcast subscribers receive a Comcast RSN?

10 A Nearly 100 percent. Therein lies
11 the discrimination. But go head. Sorry.

12 Q And can you quantify the numbers?
13 I mean we don't have anyone in the courtroom
14 to worry about. What actual numbers are we
15 talking about? What's the difference? What's
16 the [REDACTED] difference?

17 A It's approximately [REDACTED]
18 potential subscribers that are being denied by
19 virtue of Comcast discrimination.

20 Q And what type of revenue stream
21 are we talking about?

22 A Millions and millions of dollars.

1 I think a -- Well, if we talk in terms of just
2 foregone licensing revenues, I think we're on
3 the order of about [REDACTED] and, of
4 course, that's just the tip of the iceberg.
5 And, by the way, I want to go slow. The way
6 that I'm doing [REDACTED] and it's in my
7 report is you just take the [REDACTED] that's being
8 asked and that's per customer per month. You
9 multiply it by the number of customers that
10 are being denied which is [REDACTED] and multiply
11 that by 12 because the [REDACTED] is denominated
12 per customer per month. That gives you an
13 idea of the foregone licensing revenues per
14 year.

15 But we're obviously not here over
16 just the foregone licensing revenues. There
17 are also foregone advertising revenues and I
18 don't know if you want me to get into that
19 now, but I'm prepared to speak to those.

20 Q Okay.

21 A And then finally you have -- Those
22 are what I consider both short-term losses.

1 But there are long-term losses as well because
 2 of the coverage gaps which we'll probably get
 3 into will prevent in the long term MASN's
 4 ability to compete fairly for programming and
 5 if they cannot secure the programming in the
 6 MidAtlantic area of the country, they will
 7 have a very hard time in 2012 and 2013 selling
 8 and securing licensing arrangements with
 9 MVPDs.

10 Q Now that we've gotten the whole
 11 MASN footprint on the record as to what the
 12 coverage is, let's talk about the contested
 13 areas. Okay. Within the contested areas,
 14 what percentage of Comcast subscribers receive
 15 MASN?

16 A None.

17 Q And in those contested areas, what
 18 percentage of Comcast subscribers received the
 19 Comcast RSN?

20 A One hundred percent.

21 Q Do you consider arm's length
 22 transaction in the marketplace in determining